

THURSDAY, FEBRUARY 18, 2010

FIFTY-EIGHTH LEGISLATIVE DAY

CALL TO ORDER

The Senate met at 9:00 a.m., and was called to order by Mr. Speaker Ramsey.

PRAYER

The proceedings were opened with prayer by Pastor John Hunn of Immanuel Baptist Church in Lebanon, Tennessee, a guest of Senator Beavers.

PLEDGE OF ALLEGIANCE

Senator Beavers led the Senate in the Pledge of Allegiance to the Flag.

ROLL CALL

The roll call was taken with the following results:

Present 33

Senators present were: Barnes, Beavers, Berke, Black, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Jackson, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tate, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--33.

STANDING COMMITTEE REPORTS

STATE AND LOCAL GOVERNMENT

MR. SPEAKER: Your Committee on State and Local Government begs leave to report that we have carefully considered and recommend for passage: Senate Bills Nos. 2492, 2576, 2577, 2578 and 2859; Senate Joint Resolutions Nos. 759, 760 and 778; and House Joint Resolution No. 749; also, recommend that Senate Bill No. 2625 with amendment be referred to Committee on Finance, Ways and Means.

KETRON, Chairperson
February 17, 2010

The Speaker announced that he had referred Senate Bills Nos. 2492, 2576, 2577, 2578 and 2859; Senate Joint Resolutions Nos. 759, 760 and 778; and House Joint Resolution No. 749 to the Committee on Calendar.

The Speaker announced that he had referred Senate Bill No. 2625 with amendment to the Committee on Finance, Ways and Means.

EDUCATION

MR. SPEAKER: Your Committee on Education begs leave to report that we have carefully considered and recommend for passage: Senate Bills Nos. 2793, 3031 and 3512.

GRESHAM, Chairperson
February 17, 2010

THURSDAY, FEBRUARY 18, 2010 -- 58TH LEGISLATIVE DAY

The Speaker announced that he had referred Senate Bills Nos. 2793, 3031 and 3512 to the Committee on Calendar.

GENERAL WELFARE, HEALTH AND HUMAN RESOURCES

MR. SPEAKER: Your Committee on General Welfare, Health and Human Resources begs leave to report that we have carefully considered and recommend for passage: Senate Bill No. 2561 with amendment.

CROWE, Chairperson
February 17, 2010

The Speaker announced that he had referred Senate Bill No. 2561 with amendment to the Committee on Calendar.

PRESENTATION

Senator Crowe presented **Senate Joint Resolution No. 735** to Mr. Harley "Skeeter" Swift.

MOTION

Senator Norris moved, pursuant to Rule 32 and Article II, Section 18 of the Constitution of the State of Tennessee, **Senate Bills Nos. 3924 through 3926** be passed on first consideration, which motion prevailed.

INTRODUCTION OF BILLS

The Speaker announced that the following bills were filed for introduction and passed first consideration:

Senate Bill No. 3924 by Senator Ketron.

Murfreesboro -- As introduced, subject to local approval, authorizes the city council to appoint one person to hold the office of city treasurer and the office of city recorder. Amends Chapter 429 of the Private Acts of 1931; as amended.

Senate Bill No. 3925 by Senator Finney.

School Districts, Special -- As introduced, restores optimal staggering of the terms of the board of education of the Milan Special School District so that four members are elected in one year and three members are elected in another. Amends Chapter 504 of the Private Acts of 1945; as amended.

Senate Bill No. 3926 by Senator Finney.

School Districts, Special -- As introduced, increases the tax rate for the Trenton Special School District from \$2.16 to \$2.30. Amends Chapter 144 of the Private Acts of 1975; as amended.

MOTION

Senator Norris moved, pursuant to Rule 32 and Article II, Section 18 of the Constitution of the State of Tennessee, **House Bill No. 2571** be passed on first consideration, which motion prevailed.

HOUSE BILL ON FIRST CONSIDERATION

The Speaker announced that the following House Bill was transmitted to the Senate and passed first consideration:

House Bill No. 2571 -- Alcoholic Beverages -- As introduced, allows Oak Ridge Playhouse to sell alcoholic beverages for consumption on premises. Amends TCA Section 57-4-102.

MOTION

Senator Norris moved, pursuant to Rule 33 and Article II, Section 18 of the Constitution of the State of Tennessee, that **Senate Bills Nos. 3921 through 3923** be passed on second consideration and be referred to the appropriate committees or held on the Clerk's desk, which motion prevailed.

SENATE BILLS ON SECOND CONSIDERATION

The Speaker announced that the following bills passed second consideration and were referred to the appropriate committees or held on the Clerk's desk:

Senate Bill No. 3921 Local bill -- held on desk.

Senate Bill No. 3922 Local bill -- held on desk.

Senate Bill No. 3923 Local bill -- held on desk.

MOTION

Senator Norris moved, pursuant to Rule 21, **Senate Joint Resolutions Nos. 799 and 800** be passed on first consideration and lie over, which motion prevailed.

INTRODUCTION OF RESOLUTIONS

The Speaker announced that the following resolutions were filed for introduction. Pursuant to Rule 21, the resolutions lie over.

Senate Joint Resolution No. 799 by Senator Yager.
Memorials, Heroism -- Rick McMillan.

Senate Joint Resolution No. 800 by Senators Kyle, Burks, Henry, Harper, Haynes, Herron, Burchett, McNally, Crowe and Mr. Speaker Ramsey.
Memorials, Death -- Senator Anna Belle Clement O'Brien.

MOTION

Senator Norris moved, pursuant to Rule 21, **Senate Joint Resolutions Nos. 789 through 798**; and **Senate Resolutions Nos. 193 through 195** lie over and be referred to the appropriate committees or held on the Clerk's desk, which motion prevailed.

RESOLUTIONS LYING OVER

The Speaker announced that the following resolutions passed second consideration and were referred to the appropriate committees or held on the desk, pursuant to Rule 21:

Senate Joint Resolution No. 789 -- Memorials, Recognition -- Mayfield Dairy, 100th anniversary.

The Speaker announced that he had referred Senate Joint Resolution No. 789 to the Committee on Calendar.

Senate Joint Resolution No. 790 -- Memorials, Retirement -- Tim Aston.

The Speaker announced that he had referred Senate Joint Resolution No. 790 to the Committee on Calendar.

Senate Joint Resolution No. 791 -- Memorials, Retirement -- Mary Mills.

The Speaker announced that he had referred Senate Joint Resolution No. 791 to the Committee on Calendar.

Senate Joint Resolution No. 792 -- Memorials, Public Service -- Mike and Martha Keel, Mike and Martha Keel Agriculture Grounds Enhancement Endowment.

The Speaker announced that he had referred Senate Joint Resolution No. 792 to the Committee on Calendar.

Senate Joint Resolution No. 793 -- General Assembly, Statement of Intent or Position -- Urges Congress to propose an amendment concerning the application of certain federal laws to both citizens and senators and representatives and to submit such amendment to the states for ratification.

The Speaker announced that he had referred Senate Joint Resolution No. 793 to the Committee on Finance, Ways and Means.

Senate Joint Resolution No. 794 -- Naming and Designating -- Medical Education and Research Institute, Simulation Center of Excellence.

The Speaker announced that he had referred Senate Joint Resolution No. 794 to the Committee on General Welfare, Health and Human Resources.

Senate Joint Resolution No. 795 -- Memorials, Recognition -- Sullivan South High School cheerleaders, Athletic Cheerleading Championship medium varsity division winners.

The Speaker announced that he had referred Senate Joint Resolution No. 795 to the Committee on Calendar.

Senate Joint Resolution No. 796 -- Memorials, Sports -- Coach Don Grider.

The Speaker announced that he had referred Senate Joint Resolution No. 796 to the Committee on Calendar.

THURSDAY, FEBRUARY 18, 2010 -- 58TH LEGISLATIVE DAY

Senate Joint Resolution No. 797 -- Memorials, Personal Occasion -- Rosella Eugene Dykes Faulk, 80th birthday.

The Speaker announced that he had referred Senate Joint Resolution No. 797 to the Committee on Calendar.

Senate Joint Resolution No. 798 -- General Assembly, Statement of Intent or Position -- Expresses support of a world-class public education system for Tennessee and expectations that teachers, parents, and students must all pursue excellence to achieve that goal.

The Speaker announced that he had referred Senate Joint Resolution No. 798 to the Committee on Education.

Senate Resolution No. 193 -- Memorials, Recognition -- Don Schneider.

The Speaker announced that he had referred Senate Resolution No. 193 to the Committee on Calendar.

Senate Resolution No. 194 -- Memorials, Professional Achievement -- Jill Prudden, 900th victory.

The Speaker announced that he had referred Senate Resolution No. 194 to the Committee on Calendar.

Senate Resolution No. 195 -- Memorials, Recognition -- Eric and Jo Ann Maupin, Tennessee Young Farmers of the Year.

The Speaker announced that he had referred Senate Resolution No. 195 to the Committee on Calendar.

CONSENT CALENDAR NO. 1

Objections having been raised, the following resolution was placed at the heel of the calendar for Monday, February 22, 2010, pursuant to Rule 38: **Senate Joint Resolution No. 764.**

CONSENT CALENDAR NO. 2

Objections having been raised, the following bills were placed at the heel of the calendar for Monday, February 22, 2010, pursuant to Rule 38: **Senate Bills Nos. 3553, 3578, 3814 and 3870.**

Senate Bill No. 2720 -- Physicians and Surgeons -- As introduced, adds the term "Level III office-based surgery" to statute governing office-based surgery. Amends TCA Title 63, Chapter 6.

Senate Bill No. 3046 -- Trusts -- As introduced, increases from \$25,000 to \$150,000 the value of an institutional fund for which modification of a restriction on a gift instrument is permitted. Amends TCA Section 35-10-206.

Senator Faulk moved that all Senate Bills be passed on third and final consideration, which motion prevailed by the following vote:

Ayes 33
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Black, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Jackson, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tate, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--33.

A motion to reconsider was tabled.

CALENDAR

Senate Bill No. 2390 -- Firearms and Ammunition -- As introduced, allows person without handgun carry permit to transport rifle or shotgun in privately-owned motor vehicle provided there is no ammunition in the chamber or cylinder and no loaded clip or magazine in the weapon or in close proximity to the weapon. Amends TCA Title 39, Chapter 17, Part 13.

Senator Beavers moved to amend as follows:

AMENDMENT NO. 1

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-17-1307, is amended by designating the existing language of subsection (e) as subdivision (e)(1) and by adding the following new (e)(2):

(2) It is an exception to the application of subsection (a) of this section that a person who is not authorized to possess a handgun pursuant to § 39-17-1351 is transporting a rifle or shotgun in or on a privately-owned motor vehicle and the rifle or shotgun does not have ammunition in the chamber or cylinder, and no clip or magazine containing ammunition is inserted in the rifle or shotgun or is in close proximity to the weapon.

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Thereupon, **Senate Bill No. 2390**, as amended, passed its third and final consideration by the following vote:

Ayes 32
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Black, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Jackson, Johnson, Kelsey, Ketron, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tate, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--32.

A motion to reconsider was tabled.

THURSDAY, FEBRUARY 18, 2010 -- 58TH LEGISLATIVE DAY

Senator Watson moved that **Senate Bill No. 2428** be rereferred to the Committee on Calendar, which motion prevailed.

Senator Watson moved that **Senate Bill No. 2431** be rereferred to the Committee on Calendar, which motion prevailed.

Senator Watson moved that **Senate Bill No. 2433** be rereferred to the Committee on Calendar, which motion prevailed.

Senator Watson moved that **Senate Bill No. 2434** be rereferred to the Committee on Calendar, which motion prevailed.

Senator Watson moved that **Senate Bill No. 2436** be rereferred to the Committee on Calendar, which motion prevailed.

Senate Bill No. 2501 -- Consumer Protection -- As introduced, creates an offense, classified as a Class A misdemeanor, for intentionally concealing or misrepresenting the telephone number utilized by ADAD equipment. Amends TCA Title 47, Chapter 18, Part 15.

Senator Johnson moved to amend as follows:

AMENDMENT NO. 1

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, Part 15, is amended by adding the following language as a new, appropriately designated section:

§ 47-18-15__.

(a) It is an offense for any person to utilize any ADAD equipment to intentionally:

(1) Dial telephone numbers with area codes within the state;
and

(2) Conceal or misrepresent the telephone number utilized by the ADAD equipment on the call recipient's telephone or other equipment that is technically capable of displaying the number by:

(A) Displaying a telephone number other than the telephone number utilized by the ADAD equipment;

(B) Not displaying the telephone number utilized by the ADAD equipment; or

(C) Displaying an "unknown number" message or similar message instead of the telephone number utilized by the ADAD equipment.

(b) A violation of this section is a Class A misdemeanor punishable only by a fine not to exceed two thousand five hundred dollars (\$2,500) for each violation.

(c) For purposes of criminal liability, a court shall deem each call made in violation of this section as a separate offense.

(d) If a political candidate's phone number is displayed instead of the phone number being utilized by ADAD equipment, it shall not be a violation of subdivision (a)(2)(A) if:

(1) The phone number displayed on behalf of the candidate has a Tennessee area code;

(2) The political candidate signs a written document that authorizes the owner or operator of the ADAD equipment to display the candidate's phone number; and

(3) The owner or operator of the ADAD equipment files the document signed as provided in (d)(2) with the Tennessee Regulatory Authority prior to utilization of the ADAD equipment.

(e) The Tennessee Regulatory Authority is authorized to promulgate rules to implement the provisions of subsection (d). Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(f) The offenses described in this act shall not apply to a telecommunications, broadband, or voice-over-internet services provider acting solely as an intermediary for a transmission of telephone service between a caller and a recipient.

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Senator Johnson moved to amend as follows:

AMENDMENT NO. 2

AMEND by adding the following language as a new, appropriately designated subsection to the amendatory language of Section 1 of the bill as amended by # 1399165:

(g) It shall not be a violation of this section for a business, school, or charitable organization to display a phone number, different from the phone number being utilized by the ADAD equipment, if:

(1) The phone number displayed on behalf of the business, school, or charitable organization has a Tennessee area code;

(2) The phone number displayed on behalf of the business, school, or charitable organization is answered during regular business hours by a designated representative of such business, school, or charitable organization; and

(3) The business', school's, or charitable organization's name is displayed along with the phone number described in subdivisions (1) and (2).

THURSDAY, FEBRUARY 18, 2010 -- 58TH LEGISLATIVE DAY

On motion, Amendment No. 2 was adopted.

Thereupon, **Senate Bill No. 2501**, as amended, passed its third and final consideration by the following vote:

Ayes	32
Noes	0

Senators voting aye were: Barnes, Beavers, Berke, Black, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Jackson, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--32.

A motion to reconsider was tabled.

Senator Watson moved that **Senate Bill No. 2949** be rereferred to the Committee on Calendar, which motion prevailed.

Senator Black moved that **Senate Bill No. 3144** be placed on the Calendar for Thursday, February 25, 2010, which motion prevailed.

Senate Bill No. 3359 -- Physicians and Surgeons -- As introduced, authorizes the board of medical examiners to issue a St. Jude Children's Research Hospital Global Collaboration license. Amends TCA Title 63, Chapter 6, Part 2.

On motion of Senator Henry, Amendment No. 1 was withdrawn.

On motion of Senator Henry, Amendment No. 2 was withdrawn.

Senator Henry moved to amend as follows:

AMENDMENT NO. 3

AMEND by designating subdivision (f)(1) of the amendatory language of Section 1 as subdivision (f)(1)(B) and by appropriately adding the following as a new subdivision (f)(1)(A) immediately prior to the existing language of subdivision (f)(1):

(A) The general assembly finds that St. Jude Children's Research Hospital is unique as a research center hospital in this state and this nation for protocol-based therapy and treatment of children and adolescents with newly diagnosed untreated or suspected cancer; HIV infections; or certain hematologic, immunologic, or genetic diseases. St. Jude Children's Research Hospital's experts are involved in research and treatment in the fields of hematology, oncology, bone marrow transplantation, immunology, genetic diseases and infectious diseases. The hospital's research involves both basic and clinical science and it is a National Cancer Institute Comprehensive Cancer Center. The general assembly finds that supporting research and treatment by qualified physicians and researchers at St. Jude Children's Research Hospital by means of a special St. Jude Children's Research Hospital Global Collaboration license would substantially benefit the State of Tennessee, the practice of medicine and the health of persons benefitting from treatment or research conducted at the hospital.

THURSDAY, FEBRUARY 18, 2010 -- 58TH LEGISLATIVE DAY

Pursuant to Rule 39(3), Amendment No. 3 was adopted by the following vote:

Ayes 33
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Black, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Jackson, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tate, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--33.

Thereupon, **Senate Bill No. 3359**, as amended, passed its third and final consideration by the following vote:

Ayes 33
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Black, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Jackson, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tate, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--33.

A motion to reconsider was tabled.

Senate Bill No. 3407 -- Consumer Protection -- As introduced, prohibits the installing of covered file-sharing programs on a computer without providing clear and conspicuous notice to the owner that files will be publicly available; establishes that such practices violate the Tennessee Consumer Protection Act. Amends TCA Title 47, Chapter 18, Part 1.

Senator Johnson moved to amend as follows:

AMENDMENT NO. 1

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 47-18-103, is amended by adding the following as a new, appropriately designated subdivision:

() "Covered file-sharing program" means a computer program, application, or software that enables the computer on which such program, application, or software is installed to designate files as available for searching by and copying to one (1) or more other computers, to transmit such designated files directly to one (1) or more other computers, and to request the transmission of such designated files directly from one (1) or more other computers. "Covered file-sharing program" does not mean a program, application, or software designed primarily to operate as a server that is accessible over the Internet using the Internet domain name system, to transmit or receive email messages, instant messaging, real-time audio or video communications, or real-time voice communications, or to provide network or computer security, network management, hosting and backup services, maintenance, diagnostics, technical support or repair, or to detect or prevent fraudulent activities;

SECTION 2. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following as a new subdivision:

(46)(A) Installing, offering to install, or making available for installation, reinstallation or update a covered file-sharing program onto a computer without being an authorized user of that computer or without first providing clear and conspicuous notice to the authorized user of the computer that the files on that computer will be made available to the public, obtaining consent of the authorized user to installation of the program, and requiring affirmative steps by the authorized user to activate any feature on the program that will make files on that computer available to the public; or

(B) Preventing reasonable efforts to disable or remove, or to block the installation or execution of, a covered file-sharing program on a computer.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Thereupon, **Senate Bill No. 3407**, as amended, passed its third and final consideration by the following vote:

Ayes	32
Noes	0

Senators voting aye were: Barnes, Beavers, Black, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Jackson, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tate, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--32.

A motion to reconsider was tabled.

Senate Bill No. 3522 -- Trusts -- As introduced, updates the trust laws. Amends TCA Title 35; Title 45, Chapter 2 and Title 66.

Senator Faulk declared Rule 13 on **Senate Bill No. 3522**.

Senator Overbey moved to amend as follows:

AMENDMENT NO. 1

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 35-6-409, is amended by deleting it in its entirety and by substituting instead the following:

§ 35-6-409. DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS.

(a) In this section:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f), and (g), the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "Separate fund" includes, without limitation, a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection (c), a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (e), subsections (f) and (g) apply, and subsections (b) and (c) do not apply, in determining the allocation of a payment made from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under 26 U.S.C. § 2056(b)(7) or § 67-8-315(a)(6); or

(2) A trust that qualifies for the marital deduction under 26 U.S.C. § 2056(b)(5).

(e) Subsections (d), (f), and (g) do not apply if and to the extent that the series of payments would, without the application of subsection (d), qualify for the marital deduction under 26 U.S.C. § 2056(b)(7)(C).

(f) A trustee shall determine the internal income, without regard to its receipt by the trustee, of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the

surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal at least three percent (3%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under 26 U.S.C. § 7520, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which § 35-6-410 applies.

SECTION 2. Tennessee Code Annotated, Section 35-6-505, is amended by deleting it in its entirety and by substituting instead the following:

§ 35-6-505. INCOME TAXES.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) From income to the extent that receipts from the entity are allocated only to income;

(2) From principal to the extent that receipts from the entity are allocated only to principal;

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

SECTION 3. Tennessee Code Annotated, Section 35-15-302, is amended by deleting the introductory phrase: "To the extent there is no conflict of interest" and replacing it with the introductory phrase: "To the extent there is no material conflict of interest".

SECTION 4. Tennessee Code Annotated, Section 35-15-303, is amended by deleting the introductory phrase: "To the extent there is no conflict of interest" and replacing it with the introductory phrase: "To the extent there is no material conflict of interest".

SECTION 5. Tennessee Code Annotated, Section 35-15-304, is amended by deleting the closing phrase: "but only to the extent there is no conflict of interest between the representative and the person represented." and replacing it with the closing phrase: "but only to the extent there is no material conflict of interest between the representative and the person represented."

SECTION 6. Tennessee Code Annotated, Section 35-15-505(a)(2), is amended by deleting the introductory phrase: "Except as provided in chapter 16 of this title regarding investment services trusts", and replacing it with the introductory phrase: "Except as provided in chapter 16 of this title regarding investment services trusts and subdivision (a)(3) regarding a special needs trust".

Tennessee Code Annotated, Section 35-15-505(a), is further amended by renumbering subdivision (a)(3) as subdivision (a)(5), and adding new subdivisions (a)(3) and (a)(4) as follows:

(a)(3) For the purposes of this section "special needs trust" means a trust established for the benefit of one or more disabled persons, which includes, but is not limited to, any individual who is disabled pursuant to 42 U.S.C. § 1382(a), as well as any individual who is disabled pursuant to any similar federal, state or other jurisdictional law or regulation, or has a condition that is substantially equivalent to one that qualifies them to be so disabled in accordance with any of the above even if not officially found to be so disabled by a governmental body if one of the purposes of the trust, expressed in the trust instrument or implied from the trust instrument, is to allow the disabled person to qualify or continue to qualify for public, charitable or private benefits that might otherwise be available to the disabled person. The existence of one or more nondisabled remainder beneficiaries of the trust shall not disqualify it as a special needs trust for the purposes of this section.

(4) No creditor or assignee of the settlor of an irrevocable special needs trust, as defined in subdivision (a)(3), may reach or compel distributions from such special needs trust, to or for the benefit of the settlor of such special needs trust, or otherwise.

SECTION 7. Tennessee Code Annotated, Section 35-15-505, is further amended by adding a new subsection (d) as follows:

(d) With respect to an irrevocable trust for which the settlor made a qualified election pursuant to 26 U.S.C. § 2523(f), the power of a trustee, and any benefit resulting to the settlor from any exercise of such power, whether arising under the trust agreement or any other provision of the law, to make a distribution to or for the benefit of a settlor or to otherwise permit the settlor to use or benefit from trust

property following the death of the settlor's spouse, shall not be considered an amount that may be distributed to or for the settlor's benefit for purposes of subdivision (a)(2).

SECTION 8. Tennessee Code Annotated, Section 35-15-802, is amended by renumbering subsections (g) through (i) as subsections (j) through (l), respectively, deleting subsection (f) in its entirety and inserting new subsections (f) through (i) as follows:

(f) In addition to all other permissible investments and delegatable duties listed in this title, so long as they are fairly priced and in accordance with the interest of the beneficiaries and the interests of the fiduciary's appointment and otherwise comply with Chapter 14 of this title, a fiduciary may purchase, sell, hold or otherwise deal with an affiliate or an interest in an affiliated investment, as well as delegate to an affiliate or other agent associated with the fiduciary and, upon satisfaction of the conditions stated in subsection (h), such fiduciary may receive fiduciary compensation from such account at the same rate as the fiduciary would otherwise be entitled to be compensated. Such activities shall occur without any presumption of a conflict between personal and fiduciary interests of the trustee or other fiduciary.

(g) As used in this section:

(1) "Affiliate" means any corporation or other entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the fiduciary.

(2) "Affiliated investment" means an investment for which the fiduciary or an affiliate of the fiduciary acts as adviser, administrator, distributor, placement agent, underwriter, broker or in any other capacity for which it receives or has received a fee or commission from such investment or an investment acquired or disposed of in a transaction for which the fiduciary or an affiliate of the fiduciary receives or has received a fee or commission. "Affiliated investment" also means an investment in an insurance contract purchased from an insurance agency owned by, or affiliated with, the fiduciary, or any of its affiliates.

(3) "Delegate to an affiliate or associated agent" means a proper delegation of any duty of the fiduciary to any person or entity that is affiliated with, or associated with, the fiduciary. The action of doing any of the above shall be known as a "Delegation to an affiliate or associated agent".

(4) "Fee or commission" means compensation paid to a fiduciary or an affiliate thereof on account of its services to or on behalf of an investment.

(5) For purposes of this section, fiduciary includes any trustee, which has the same meaning as in § 35-14-102, as well as any other fiduciary.

(6) "Investment" shall mean any security as defined in § 2(a)(1) of the Securities Act of 1933, any contract of sale of a commodity for future delivery within the meaning of § 2(i) of the Commodity Exchange Act, or any other asset permitted for fiduciary accounts pursuant to the terms of Chapter 14 of this title or by the terms of the governing instrument, including by way of

illustration and not limitation, shares or interests in a public or private investment fund, including, but not limited to, a private investment fund organized as a limited partnership, limited liability company, a statutory or common law business trust, or a real estate investment trust, joint venture or other general or limited partnership, or an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940.

(h) A fiduciary seeking compensation pursuant to subsection (f) shall disclose to each principal in an agency relationship, and to all current recipients of account statements of any other fiduciary account, all fees or commissions paid or to be paid by the account, or received or to be received by an affiliate arising from such affiliated investment or delegation to an affiliate or associated agent. The disclosure required under this subsection may be given either in a copy of the prospectus or any other disclosure document prepared for the affiliated investment under federal or state securities laws or in a written summary that includes all fees or commissions received or to be received by the fiduciary or any affiliate of the fiduciary and an explanation of the manner in which such fees or commissions are calculated, either as a percentage of the assets invested or by some other method. Such disclosure shall be made at least annually unless there has been no increase in the rate at which such fees or commissions are calculated since the most recent disclosure. Notwithstanding this subsection (h), no such disclosure is required if the governing instrument or a court order expressly authorizes the fiduciary to invest the fiduciary account in affiliated investments or to perform the delegation to an affiliate or associated agent.

(i) A fiduciary that has complied with subsection (h), whether by making the applicable disclosure or by relying on the terms of a governing instrument or court order, shall have full authority to administer an affiliated investment, including the authority to vote proxies thereon, without regard to the affiliation between the fiduciary and the investment or the fiduciary and delegatee, as the case may be.

SECTION 9. Tennessee Code Annotated, Section 35-15-813, is amended by adding a new subsection (g) to read as follows:

(g) If the trustee of a trust is bound by any written confidentiality restrictions with respect to an asset of a trust, a trustee may require that any beneficiary who is eligible to receive information pursuant to this or any other section of this title about such asset shall agree in writing to be bound by the confidentiality restrictions that bind the trustee before receiving such information from the trustee.

SECTION 10. Tennessee Code Annotated, Section 35-15-1010, is amended by renumbering subsection (c) as subsection (d), deleting subsection (b) in its entirety, and adding new subsections (b) and (c) as follows:

(b) Except as otherwise provided in subsection (a) or (c), the debts, obligations and liabilities incurred by a trustee by reason of the ownership, management or control of trust property in the trustee's fiduciary capacity, shall be enforceable solely against the trust and its property, without any obligation or liability personally being borne by any trustee of such trust.

(c) A trustee is personally liable for torts committed in the course of administering a trust only if the trustee is personally at fault on account of the trustee's own willful misconduct proven by clear and convincing evidence.

SECTION 11. Tennessee Code Annotated, Section 35-15-1011, is amended by deleting subsection (b) in its entirety and inserting a new subsection (b) as follows:

(b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault on account of the trustee's own willful misconduct proven by clear and convincing evidence.

SECTION 12. Tennessee Code Annotated, Section 35-15-1011(c), is amended by deleting the following phrase: "or is held by the trustee's spouse or one (1) or more of the trustee's descendants, siblings, or parents, or the spouse of any of them".

SECTION 13. Tennessee Code Annotated, Section 35-16-102(14), is amended by deleting the subdivision in its entirety and substituting instead the following:

(14) "Transferor" means a person who, directly or indirectly, makes a disposition or causes a disposition to be made in such person's capacity:

(A) As an owner of property;

(B) As a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate; or

(C) As a trustee.

SECTION 14. Tennessee Code Annotated, Section 35-16-104(a), is amended by adding the following phrase to the end ", and, in the case of a creditor whose claim arose after a qualified disposition, unless the qualified disposition was also made with actual intent to defraud such creditor".

SECTION 15. Tennessee Code Annotated, Section 35-16-104(d), is amended by deleting the phrase "neither the" in the first sentence and replacing it with the phrase "neither a".

SECTION 16. Tennessee Code Annotated, Section 35-16-104, is further amended by adding a new subsection (j) as follows:

(j) Subsection (i) shall not apply to any claim for forced heirship, legitime or elective share.

SECTION 17. Tennessee Code Annotated, Section 35-16-105, is amended by adding the following sentence after the first sentence: "The powers and rights conferred by the Investment Services Trust upon the transferor are personal powers and rights that may not be exercised by a creditor or any other person, except as expressly permitted by the trust."

SECTION 18. Tennessee Code Annotated, Section 35-16-109, is amended by deleting the phrase ", but the person may not otherwise serve as advisor to a trust that is a qualified disposition except with respect to the retention of the veto right permitted by § 35-15-111(1)".

SECTION 19. Tennessee Code Annotated, Section 35-16-111, is amended by deleting the word "and" at the end of subsection (7); by deleting the period at the end of subsection (8) and substituting instead a semicolon (;) and by adding subsections (9), (10) and (11) to read as follows:

(9) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if such potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly permits a distribution to the transferor as reimbursement for such taxes and if such distribution would be the result of a qualified trustee's or qualified trustees' acting:

(A) In such qualified trustee's or qualified trustees' discretion or pursuant to a mandatory direction in the trust instrument; or

(B) At the direction of an adviser described in § 35-16-108, who is acting in such adviser's discretion;

(10) The ability, whether pursuant to direction in the investment services trust or discretion of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; and

(11) A qualified trustee's or qualified trustees' authority to make distributions to pay taxes in lieu of or in addition to the power to make a distribution for taxes pursuant to subdivision (3), (6), (9), or (10) by direct payment to the taxing authorities.

SECTION 20. Tennessee Code Annotated, Section 66-1-202(f), is amended by deleting the subsection in its entirety and substituting instead the following:

(f) As to any trust created after June 30, 2007, or that becomes irrevocable after June 30, 2007, the terms of the trust shall require that all beneficial interests in the trust vest or terminate or the power of appointment is exercised within three hundred sixty (360) years.

SECTION 21. Tennessee Code Annotated, Title 35, is amended by adding the following as a new appropriately numbered chapter:

§ 35-17-101. TOTAL RETURN UNITRUSTS.

(a) In this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party", as defined in 26 U.S.C. § 672(c), with respect to the person then acting as trustee of the trust and excludes the trustor of the trust and any interested trustee;

(2) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one (1) or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one (1) or more such persons;

(3) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party", as defined in 26 U.S.C. § 672(c), with respect to such distributee;

(4) "Interested trustee" means an individual trustee who is a qualified beneficiary or any trustee who may be removed and replaced by an interested distributee, or an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust;

(5) "Internal Revenue Code" refers to the Internal Revenue Code of 1986, as amended from time to time, and any references to a section of such shall include any successor, substituted, or amended section of the Internal Revenue Code;

(6) "Total return unitrust" means an income trust that has been converted under this section or the laws of any other jurisdiction that permits an income trust to be converted to a trust in which a unitrust amount is treated as the net income of the trust;

(7) "Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or on the direction of one (1) or more persons acting in a fiduciary capacity;

(8) "Trustor" means an individual who created an inter vivos or a testamentary trust;

(9) "Qualified beneficiaries" means those beneficiaries of a trust specified in § 35-15-103(13); and

(10) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

(b) A trustee, other than an interested trustee, or where two (2) or more persons are acting as trustee, a majority of the trustees who are not an interested trustee, in either case hereafter "trustee", may, in its sole discretion and without court approval:

(1) Convert an income trust to a total return unitrust;

(2) In the case of a total return unitrust converted under this section or the laws of any other jurisdiction, reconvert a total return unitrust to an income trust; or

(3) In the case of a total return unitrust converted under this section or the laws of any other jurisdiction, change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if all of the following apply:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to the trustor of the trust, if living, and to all qualified beneficiaries of the trust;

(C) At least one (1) person receiving notice under subdivision (b)(3)(B) is legally competent; and

(D) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within thirty (30) days of receipt of such notice.

(c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two (2) or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without court approval:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if all of the following apply:

(A) The trustee adopts a written policy for the trust providing:

(1) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(2) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(3) That the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

(1) The percentage to be used to calculate the unitrust amount;

(2) The method to be used in determining the fair market value of the trust; and

(3) Which assets, if any, are to be excluded in determining the unitrust amount;

(C) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, and the determinations of the disinterested person to the trustor of the trust, if living and to all qualified beneficiaries of the trust;

(D) At least one (1) person receiving notice under subdivision (c)(3)(C) of this section is legally competent; and

(E) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action or the determinations of the disinterested person within thirty (30) days of receipt of such notice.

(d) If any trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under the provisions of subsection (b) or (c), the trustee may petition the court for such order as the trustee deems appropriate. In the event, however, there is only one (1) trustee of such trust and such trustee is an interested trustee or in the event there are two (2) or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of such trustee or trustees or any person

interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary to enable the court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from fair market value for computing the unitrust amount.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three (3) percent nor more than five (5) percent, taking into account the intentions of the trustor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(g) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in 26 U.S.C. § 1222(9), may consider the unitrust amount as paid from net short-term capital gain described in 26 U.S.C. § 1222(5) and then from net long-term capital gain described in 26 U.S.C. § 1222(7); and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(h) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions, including, but not limited to, provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases;

(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(4) If the trust is reconverted to an income trust, the effective date of such reconversion; and

(5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(i) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(j) In the case of a trust for which a marital deduction has been taken for federal tax purposes under 26 U.S.C. § 2056 or § 2523, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(k)(1) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust including a trust initially converted to a total return unitrust under the laws of another jurisdiction that is administered in Tennessee under Tennessee law or to any trust, regardless of its place of administration, whose governing instrument provides that Tennessee law governs matters of construction or administration unless:

(A) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(B) The trust is a pooled income fund described in 26 U.S.C. § 642(c)(5) or a charitable-remainder trust described in 26 U.S.C. § 664(d);

(C) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the trustor's intent that net income not be calculated as a unitrust amount.

(2) Any of the following statements in the governing instrument, or words similar to such statements, shall be sufficient to preclude the use of this section:

The provisions of § 35-17-102, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust.

or

My trustee shall not determine the distributions to the income beneficiary as a unitrust amount.

(l) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written

notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust or to change the percentage used to calculate the unitrust amount.

(m) This section shall be available to trusts in existence at the date of enactment or created thereafter.

§ 35-17-102. EXPRESS TOTAL RETURN UNITRUSTS.

(a) This section shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than three percent (3%) nor more than five percent (5%) per year of the fair market value of the trust's assets, valued at least annually, such trust to be referred to in this section as an "express total return unitrust".

(b) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in one (1) year or more than one (1) year.

(c) Distribution of such a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(d) An express total return unitrust may or may not provide a mechanism for changing the unitrust percentage similar to the mechanism provided under § 35-17-101, based upon the factors noted therein, and may or may not provide for a conversion from a unitrust to an income trust and/or a reconversion of an income trust to a unitrust similar to the mechanism under § 35-17-101.

(e) If an express total return unitrust does not specifically or by reference to § 35-17-101 deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power and the express total return unitrust shall be deemed to be a "total return unitrust" within the meaning of § 35-17-101 for purposes of applying § 35-17-101 to the trust.

(f) The distribution of a fixed percentage of not less than three percent (3%) nor more than five percent (5%) reasonably apportions the total return of an express total return unitrust.

(g) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(h) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

(1) From net accounting income determined as if the trust were not a unitrust;

(2) From ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income as described in 26 U.S.C. § 1222(9), from net realized short-term capital gain as described in 26 U.S.C. § 1222(5) and then from net realized long-term capital gain described in 26 U.S.C. § 1222(7); and

(4) From the principal of the trust.

(i) The trust instrument may provide that assets:

(1) For which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

(2) Used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.

(j) In this section, "Internal Revenue Code" refers to the Internal Revenue Code of 1986, as amended from time to time, and any references to a section thereof shall include any successor, substituted, or amended section of the Internal Revenue Code.

SECTION 22. The Tennessee Code Commission is requested to update and publish the revised Official Comments of the Uniform Law Commissioners to these sections of Tennessee Code Annotated, 35-6-409 and 35-6-505, as amended, by Sections 1 and 2 of this Act, respectively.

SECTION 23. The Tennessee Code Commission is requested to add and publish the following legislative comments regarding 2010 Amendments to the official comments in the applicable sections:

(1) Tennessee Code Annotated, Section 35-15-302.

2010 Amendment.

This section was amended to make it clear that the standard used to determine whether no conflict exists, and therefore, representation is available, is subject to a test of materiality. Therefore, it is not necessary that no conflict, whatsoever, exist in order to avail oneself of representation, only that no material conflict exist.

(2) Tennessee Code Annotated, Section 35-15-303.

2010 Amendment.

This section was amended to make it clear that the standard used to determine whether no conflict exists, and therefore, representation is available, is subject to a test of materiality. Therefore, it is not necessary that no conflict, whatsoever, exist in order to avail oneself of representation, only that no material conflict exist.

(3) Tennessee Code Annotated, Section 35-15-304.

2010 Amendment.

This section was amended to make it clear that the standard used to determine whether no conflict exists, and therefore, representation is available, is subject to a test of materiality. Therefore, it is not necessary that no conflict, whatsoever, exist in order to avail oneself of representation, only that no material conflict exist.

(4) Tennessee Code Annotated, Section 35-15-802.

2010 Amendment.

Subsection (f) through (i) clearly grant the express authority to use affiliates and related parties or affiliated delegates to manage assets and perform administrative functions. This increases flexibility and grants fiduciaries the ability to leverage expertise inside their broad organization. Versus the common law, the Restatement of Trusts (Third) and the "uniform" Uniform Trust Code and Uniform Prudent Investor Act, these provisions grant exceptions to the no further inquiry rule relative to conflicts of interests for investments and other transactions between affiliates so long as these transactions are fairly priced, are in accordance with the interests of the beneficiaries and the interests of the fiduciary appointment and otherwise comply with the Tennessee Uniform Prudent Investor Act. Under most circumstances, a fiduciary must disclose, at least annually (unless there has been no change) to the beneficiaries entitled to receive a copy of the trustee's annual report, the rate and method by which any additional compensation paid, earned or received from or by any affiliate was determined.

(5) Tennessee Code Annotated, Section 35-15-813.

2010 Amendment.

Subsection (g) assures that if a trustee is required to keep certain information regarding trust assets confidential the trustee can be assured that he / she can carry out their duty to inform and report to beneficiaries without fear of indirectly breaching the trustee's duty of confidentiality. This is often of special importance when a closely held asset is held by a trust.

SECTION 24. This act shall take effect on July 1, 2010, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Senator Overbey moved that **Senate Bill No. 3522**, as amended, be placed at the heel of the Calendar for today, which motion prevailed.

Senator Ketron moved that **Senate Bill No. 3581** be referred to the Committee on Calendar, which motion prevailed.

THURSDAY, FEBRUARY 18, 2010 -- 58TH LEGISLATIVE DAY

Senator Johnson moved that **Senate Bill No. 3815** be placed on the Calendar for Monday, February 22, 2010, which motion prevailed.

Senator Haynes moved that **Senate Joint Resolution No. 708** be withdrawn from the Senate, which motion prevailed.

Senate Bill No. 2496 -- Alcoholic Beverages -- As introduced, authorizes the sale and consumption of alcoholic beverages on the premises of the Clayton Center for the Arts in Blount County. Amends TCA Section 57-4-101; Section 57-4-102 and Section 57-4-301.

Senator Overbey declared Rule 13 on **Senate Bill No. 2496**.

Senate Bill No. 2496 passed its third and final consideration by the following vote:

Ayes	23
Noes	5

Senators voting aye were: Barnes, Berke, Black, Burchett, Crowe, Faulk, Finney, Harper, Haynes, Henry, Jackson, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Stewart, Tate, Woodson and Mr. Speaker Ramsey--23.

Senators voting no were: Beavers, Bunch, Burks, Herron and Southerland--5.

A motion to reconsider was tabled.

Senate Bill No. 2617 -- Alcoholic Beverages -- As introduced, allows Oak Ridge Playhouse to sell alcoholic beverages for consumption on premises. Amends TCA Section 57-4-102.

On motion, Senate Bill No. 2617 was made to conform with **House Bill No. 2571**.

On motion, House Bill No. 2571, on same subject, was substituted for Senate Bill No. 2617.

House Bill No. 2571 passed its third and final consideration by the following vote:

Ayes	23
Noes	5

Senators voting aye were: Barnes, Berke, Black, Burchett, Crowe, Faulk, Finney, Ford, Harper, Haynes, Henry, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Stewart, Tate, Woodson and Mr. Speaker Ramsey--23.

Senators voting no were: Beavers, Bunch, Burks, Herron and Southerland--5.

A motion to reconsider was tabled.

Senate Bill No. 2731 -- Alcoholic Beverages -- As introduced, allows Majestic Theater in Chattanooga to sell alcoholic beverages for consumption on premises. Amends TCA Section 57-4-102.

Senate Bill No. 2731 passed its third and final consideration by the following vote:

THURSDAY, FEBRUARY 18, 2010 -- 58TH LEGISLATIVE DAY

Ayes 24
Noes 5

Senators voting aye were: Barnes, Berke, Black, Burchett, Crowe, Faulk, Finney, Ford, Harper, Haynes, Henry, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Stewart, Tate, Watson, Woodson and Mr. Speaker Ramsey--24.

Senators voting no were: Beavers, Bunch, Burks, Herron and Southerland--5.

A motion to reconsider was tabled.

Senate Bill No. 3034 -- Alcoholic Beverages -- As introduced, adds Sligo Marina in Dekalb County to those facilities authorized to sell alcoholic beverages for on-premises consumption as a premier type tourist resort. Amends TCA Section 57-4-102.

Senate Bill No. 3034 passed its third and final consideration by the following vote:

Ayes 23
Noes 5

Senators voting aye were: Barnes, Berke, Black, Burchett, Crowe, Faulk, Finney, Ford, Harper, Haynes, Henry, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Stewart, Tate, Woodson and Mr. Speaker Ramsey--23.

Senators voting no were: Beavers, Bunch, Burks, Herron and Southerland--5.

A motion to reconsider was tabled.

FURTHER ACTION ON SENATE BILL NO. 3522, AS AMENDED

Senator Overbey moved that **Senate Bill No. 3522**, as amended, be placed on the Calendar for Monday, February 22, 2010, which motion prevailed.

MOTION

Senator Crowe moved that Rule 83(8) be suspended for the purpose of placing **Senate Bill No. 3869** on the calendar for the Committee on General Welfare, Health and Human Resources for Wednesday, February 24, 2010, which motion prevailed.

RECALL OF BILL

On motion of Senator Watson, **Senate Bills Nos. 2961 and 2399** were recalled from the Committee on Commerce, Labor and Agriculture.

WITHDRAWAL OF BILL

On motion of Senator Watson, Senate Bills Nos. 2961 and 2399 were withdrawn from the Senate.

MOTION

On motion of Senators Overbey, Berke, Marrero, Burchett, Harper and Ford, their names were added as sponsors of **Senate Joint Resolution No. 764**.

On motion of Senator Johnson, his name was removed as sponsor of **Senate Bill No. 1363**.

On motion of Senator Faulk, his name was added as sponsor of **Senate Bill No. 1363**.

On motion of Senator Gresham, her name was added as sponsor of **Senate Bill No. 2390**.

On motion of Senators Berke, Burks, Barnes and Marrero, their names were added as sponsors of **Senate Bill No. 2501**.

On motion of Senators Marrero, Ford, Overbey, Tate, Berke, Henry and Herron, their names were added as sponsors of **Senate Bill No. 3359**.

On motion of Senators Black, Overbey, Burks, Johnson, Tracy and Yager, their names were added as sponsors of **Senate Bill No. 3407**.

On motion of Senator Johnson, his name was added as sponsor of **Senate Bill No. 3522**.

On motion of Senator Overbey, his name was added as sponsor of **Senate Bill No. 3869**.

On motion of Senator Berke, his name was added as sponsor of **Senate Bill No. 3847**.

On motion of Senators Black and Southerland, their names were added as sponsors of **Senate Bill No. 2681**.

On motion of Senator Black, her name was added as sponsor of **Senate Bill No. 2480**.

On motion of Senator Stewart, his name was added as sponsor of **Senate Bill No. 3478**.

ENGROSSED BILLS

February 18, 2010

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully examined Senate Bills Nos. 2390, 2496, 2501, 2720, 2731, 3034, 3046, 3359 and 3407; and find same correctly engrossed and ready for transmission to the House.

M. SCOTT SLOAN,
Chief Engrossing Clerk.

MESSAGE FROM THE HOUSE

February 18, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2571, passed by the House.

BURNEY T. DURHAM,
Chief Clerk.

THURSDAY, FEBRUARY 18, 2010 -- 58TH LEGISLATIVE DAY

MESSAGE FROM THE HOUSE

February 18, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bills Nos. 381, 699, 2415, 2487, 2669 and 2741; passed by the House.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

February 18, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Joint Resolutions Nos. 803, 822, 824, 825, 826, 827, 828, 829, 831, 835, 836, 837 and 838; adopted, for the Senate's action.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

February 18, 2010

MR. SPEAKER: I am directed to return to the Senate, Senate Bill No. 2417, substituted for House Bill on same subject and passed by the House.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

February 18, 2010

MR. SPEAKER: I am directed to return to the Senate, Senate Joint Resolutions Nos. 762, 766, 769, 770, 771, 772, 773, 774, 775, 776, 777, 779 and 781; concurred in by the House.

BURNEY T. DURHAM,
Chief Clerk.

ENROLLED BILLS

February 18, 2010

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully compared Senate Bill No. 2417, and find same correctly enrolled and ready for the signatures of the Speakers.

M. SCOTT SLOAN,
Chief Engrossing Clerk.

ENROLLED BILLS

February 18, 2010

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully compared Senate Joint Resolutions Nos. 762, 766, 769, 770, 771, 772, 773, 774, 775, 776, 777, 779 and 781; and find same correctly enrolled and ready for the signatures of the Speakers.

M. SCOTT SLOAN,
Chief Engrossing Clerk.

THURSDAY, FEBRUARY 18, 2010 -- 58TH LEGISLATIVE DAY

MESSAGE FROM THE HOUSE

February 18, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2414, for the signature of the Speaker.

BURNEY T. DURHAM,
Chief Clerk.

SIGNED

February 18, 2010

The Speaker announced that he had signed the following: Senate Joint Resolutions Nos. 762, 766, 769, 770, 771, 772, 773, 774, 775, 776, 777, 779 and 781.

MESSAGE FROM THE HOUSE

February 18, 2010

MR. SPEAKER: I am directed to return to the Senate, Senate Joint Resolutions Nos. 762, 766, 769, 770, 771, 772, 773, 774, 775, 776, 777, 779 and 781; signed by the Speaker.

BURNEY T. DURHAM,
Chief Clerk.

REPORT OF CHIEF ENGROSSING CLERK

February 18, 2010

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have transmitted to the Governor the following: Senate Joint Resolutions Nos. 762, 766, 769, 770, 771, 772, 773, 774, 775, 776, 777, 779 and 781; for his action.

M. SCOTT SLOAN,
Chief Engrossing Clerk.

**REPORT OF COMMITTEE ON CALENDAR
CONSENT CALENDAR # 1**

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Monday, February 22, 2010: Senate Joint Resolution No. 788; and House Joint Resolutions Nos. 804, 805, 808, 809, 810, 811, 812, 814, 815, 816, 818, 819 and 21.

This the 18th day of February, 2010.
MIKE FAULK, Chairperson.

**REPORT OF COMMITTEE ON CALENDAR
CONSENT CALENDAR # 2**

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Monday, February 22, 2010: Senate Bills Nos. 983, 2576,

THURSDAY, FEBRUARY 18, 2010 -- 58TH LEGISLATIVE DAY

2577, 2578, 2584, 2585, 2587, 3031 and 3512; House Joint Resolution No. 749; and Senate Joint Resolutions Nos. 759, 760 and 778.

This the 18th day of February, 2010.
MIKE FAULK, Chairperson.

**REPORT OF COMMITTEE ON CALENDAR
CONSENT CALENDAR**

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Wednesday, February 24, 2010: Senate Joint Resolutions Nos. 789, 790, 791, 792, 795, 796 and 797; and Senate Resolutions Nos. 193, 194 and 195.

This the 19th day of February, 2010.
MIKE FAULK, Chairperson.

**REPORT OF COMMITTEE ON CALENDAR
LOCAL BILL
CONSENT CALENDAR**

Pursuant to Rule 26, the following bills have been set on the Consent Calendar for Monday, February 22, 2010: Senate Bills Nos. 2381, 2611 and 2706.

This the 18th day of February, 2010.
MIKE FAULK, Chairperson.

REPORT OF COMMITTEE ON CALENDAR

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Monday, February 22, 2010: Senate Bills Nos. 2530, 2681, 3522, 3553, 3578, 3814, 3815 and 3870; Senate Joint Resolution No. 764; and House Joint Resolution No. 369.

This the 18th day of February, 2010.
MIKE FAULK, Chairperson.

REPORT OF COMMITTEE ON CALENDAR

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Wednesday, February 24, 2010: Senate Bills Nos. 842, 2492, 2561, 2793 and 2859.

This the 19th day of February, 2010.
MIKE FAULK, Chairperson.

ADJOURNMENT

Senator Norris moved the Senate adjourn until 5:00 p.m., Monday, February 22, 2010, which motion prevailed.